

CASE 60170P1
Application No. 10/091,154

REMARKS

Applicants believe that all objections and rejections were fully addressed in the reply under 37 C.F.R. §1.111 submitted on November 6, 2003. However, in order to expedite prosecution of the application, Applicants submit herewith the Declaration under 37 CFR §1.132 by Dr. Tom Vare Williams, one of the inventors of the instant application.

Claims 28-49 were rejected in the Office Action of May 20, 2003 under 35 USC § 102 - 35 USC § 103 as anticipated by or, in the alternative, under 35 U.S.C. 103 as obvious over Elmstrom (US Patent 6,355,865, filed 26 May 1999).

The Declaration of Dr. Williams shows that Pollenizer 1 disclosed in Elmstrom and diploid watermelon line NO1F3203B of the claimed invention clearly differ in the brittleness of the fruit. Therefore, diploid watermelon line NO1F3203B is not identical to Pollenizer 1 of Elmstrom.

Accordingly, it is respectfully submitted that diploid watermelon line NO1F3203B of the claimed invention is novel over Elmstrom.

The Examiner alleges that Pollenizer 1 appears to differ only from the claimed plants and seeds due to minor morphological variations, wherein said minor morphological variations would be expected to occur in different progeny of the same cultivar.

The Declaration of Dr. Williams shows that there is a clear difference in the brittleness of the fruit of Pollenizer 1 and of diploid watermelon line NO1F3203B. Such a difference cannot be considered to be a minor morphological variation between different progeny of the same cultivar.

Moreover, Elmstrom does not disclose the brittleness of the fruits of Pollenizer 1, and nothing in Elmstrom teaches or suggests to alter the brittleness of a watermelon fruit to arrive at the claimed invention.

Applicants also wish to note Table 2 in Dr. Williams' Declaration. The Examiner will see that the trend towards smaller leaf surface area is confirmed. As Dr. Williams notes, the larger leaf surface area seen in diploid watermelon line NO1F3203B is due to variations in growth conditions and sampling.

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Consequently, it is respectfully submitted that the claimed invention is non-obvious over Elmstrom.

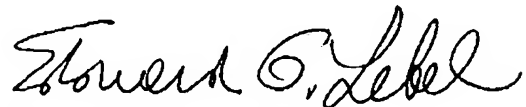
Accordingly, the rejection under 35 U.S.C. 102(e) or, in the alternative, under 35 U.S.C. 103 should be withdrawn.

In view of the above, it is respectfully submitted that all objections and rejections raised by the Examiner have been addressed, and that the application is now in condition for allowance. Early notice to this effect is solicited.

It is believed that no fee is due. However, the Commissioner is also hereby authorized to charge any additional fees under 37 CFR §1.17, which may be required to maintain the pendency of the above application, to Deposit Account No. 50-1744 in the name of Syngenta Biotechnology, Inc.

If any additional information is needed or if, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this subject application, the Examiner is invited to call the undersigned at (919) 765-5117.

Respectfully submitted,



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